IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 953 of 2000
Date of Decision : January 18, 2010

Raj Kumar @ Raju and others

....Petitioners

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : None for the petitioners.

Mr. P.S. Sidhu, Additional Advocate General, Punjab

Mr. A.S. Virk, Advocate
for the complainant.

T.P.S. MANN, J.(Oral)

By way of common order, the Court intends to dispose of the present revision filed by Raj Kumar @ Raju, Pawan Kumar and Baljinder Singh accused against their conviction and sentences and Criminal Revision No.1322 of 2000 filed by Ajaib Singh, Gurnaib Singh and Surinder Singh of the complainant party, whereby they have prayed for restoring the conviction of the accused under Section 148 IPC and enhancing the sentences of imprisonment and fine imposed upon the convicted accused, besides seeking the setting aside of the acquittal of Pirthi Chand and Subhash Chand accused.

The alleged occurrence had taken place on 5.8.1991 at 8.00 A.M. Norata Ram made a statement before the police on 6.8.1991,

wherein he stated that at the time of the occurrence he and his brother Niranjan Singh were in their fields when Bansa son of Pirthi Chand allowed his buffaloes to stray in their fields. Upon this, Norata Ram and his brother rebuked Bansa, who after leaving the buffaloes in the land went towards the village and returned alongwith Pirthi Chand and Raj Kumar @ Raju. All of them were carrying *laties* and opened an attack upon Niranjan Singh. Pirthi Chand gave a *lathi* blow on the left shoulder of Niranjan Singh, whereas Raj Kumar @ Raju gave *lathi* blows on his arms. Ajaib Singh and Gurnaib Singh, sons of Norata Ram reached there to rescue Niranjan Singh. In the meanwhile, Pawan Kumar and Baljinder Singh, sons of Pirthi Chand, while carrying *lathies* reached the spot on a Hero Honda motorcycle. Pawan Kumar gave a *lathi* blow on the right shoulder of Gurnaib Singh, whereas Baljinder Singh gave *dang* blows over the arms of Ajaib Singh. Pawan Kumar also gave a *dang* blow hitting Gurnaib Singh on his head. Kesar Ram, father of Pirthi Chand, accused also reached the spot and raised a *lalkara* not to spare anyone and to settle the daily dispute. Alongwith Kesar Ram, accused Bansa also reached the spot. Pawan Kumar and Baljinder Singh then left Gurnaib Singh and Ajaib Singh and started giving beatings to Surinder Singh, nephew of Norata Ram, who had also come to the spot. Pawan Kumar gave a *dang* blow on his right knee, whereas Baljinder Singh gave *dang* blow on his head. The alarm raised by Norata Ram, Niranjan Singh and Surinder Singh attracted Gurnam Singh, Lamberdar, who saved the complainant party from the accused. The accused then

fled away towards village Dayalpura, while carrying their respective weapons. According to Norata Ram, the motive behind the occurrence was that the accused party wanted to destroy his standing crop and to cause injuries to the complainant party. The injured were then taken to General Hospital, Sector 16, Chandigarh.

PW-12 Dr. Parminder Singh, medico legally examined Gurnaib Singh on 5.8.1991 at 9. A.M. and found the following injuries on his person :-

1. Left fore-arm swelling present deformity present. Tenderness present.
2. Lacerated wound of 3”x1” on right parietal region.
3. Lacerated wound of 1”x ½” on left eye brow.
4. Complaint of pain right shoulder, Advised X-ray right shoulder.

After obtaining the X-ray report, the doctor declared injuries No.1 and 4 to be grievous in nature, while the remaining injuries were simple.

On the same day, at about 10.00 A.M., the said doctor also medico legally examined Ajaib Singh and found the following injuries :-

1. Swelling and tenderness of left fore-arm. Advised X-ray of left fore-arm.
2. Swelling and tenderness right fore-arm. Advised X-ray of right fore-arm.

Injury No.2 was declared grievous in nature in view of the X-ray report, whereas injury No.1 was found to be simple.

Niranjan Singh was also medico legally examined by Dr. Parminder Singh on 5.8.1991 at 10.00 A.M., who found the following injuries on his person :-

1. Lacerated wound 2”x1” on right palm, bleeding present.
2. Lacerated wound of 1”x ½” on left middle finger.
3. Complaint of pain in left fore-arm. Advised X-ray left fore-arm.

All the injuries were subjected to radiological examination and after obtaining the report, the doctor declared injuries No.2 and 3 as grievous in nature, while injury No.1 was declared as simple.

Similarly, Surinder Singh was medico legally examined on the same day at 10.00 A.M. and the following injuries were noticed on his person :-

1. Swelling and tenderness on right knee joint. Advised X-ray right knee joint.
2. Lacerated wound of 2”x1” on right parietal region.

On the basis of the X-ray report, the doctor declared injury No.1 as grievous in nature, while injury No.2 as dangerous to life in the absence of medical aid.

It may be mentioned here that on the basis of the statement made by Norata Ram on 6.8.1991, DDR No.22 was incorporated in Police Station, Banur. Pursuant to the conclusion of the medico legal report in respect of the injured, the police found that the place of occurrence fell within the jurisdiction of Police Station, Sohana and therefore, no further proceedings need be taken in the said Police Station. Thereafter, statement Ex. PD of Niranjan Singh was recorded on 14.8.1991, on the basis of which FIR No. 33 dated 14.8.1991 was registered at Police Station, Sohana.

After the completion of the investigation, the challan was presented by the police against the six accused under Sections 307/325/323/149/148 IPC and the case committed to the Court of Sessions. However, learned Additional Sessions Judge, Ropar vide order dated 15.7.1992 came to the conclusion that injury No.2 on the person of Surinder Singh injured did not fall under Section 307 IPC, instead, it fell under Section 325 IPC Only. Accordingly, after framing charges under Sections 325/323/149 and 148 IPC against the six accused, learned Additional Sessions Judge, sent the file to the Court of Chief Judicial Magistrate for trial.

In support of its case, the prosecution examined Niranjan Singh complainant as PW1, Norata Ram, eye witness as PW2, Gurnaib Singh, Ajaib Singh and Surinder Singh, injured, as PWs 3, 4 and 6, respectively, Dr. S.P. Bhardwaj, Radiologist as PW5, SI Atma Singh as

PW7, Gian Chand, Draftsman as PW8, Constable Bachan Singh as PW9, ASI Chain Singh as PW10, SI Tarsem Singh, Investigating Officer as PW11 and Dr. Parminder Singh as PW12.

When examined under Section 313 Cr.P.C., the accused pleaded false implication. In defence, they examined Dial Singh DW1, who testified that no such occurrence, as alleged by the prosecution, had taken place.

After hearing learned counsel for the parties and going through the evidence, learned Chief Judicial Magistrate, Ropar vide judgment dated 10.12.1999 acquitted Kesar Ram accused of the charges against him. However, the prosecution case against the remaining five accused was accepted. All of them were convicted under Sections 148, 325 and 323 IPC. Subhash Chand accused was extended the benefit of probation. However, the remaining four accused, namely, Pirthi Chand, Raj Kumar @ Raju, Pawan Kumar and Baljinder Singh were sentenced to undergo RI for one year each under Sections 148 IPC. Accused Raju @ Raj Kumar was sentenced to undergo RI for two years and to pay a fine of Rs.600/- under Section 325 IPC whereas accused Pirthi, Pawan Kumar and Baljinder Singh were sentenced to undergo RI for 1½ years and to pay a fine of Rs.400/- each. Accused Baljinder Singh was sentenced to undergo RI for two years and to pay a fine of Rs.600/- under Section 325 IPC whereas accused Raju, Pawan Kumar and Pirthi were sentenced to undergo RI for 1½ years and to pay a fine of Rs.400/- each. Accused Pawan Kumar was sentenced to undergo RI for two years

and to pay a fine of Rs.600/- under Section 325 IPC whereas Pirthi, Baljinder Singh and Raju were sentenced to undergo RI for 1½ years and to pay a fine of Rs.400/- each. All four of them, namely, Raju @ Raj Kumar, Pawan Kumar, Pirthi Chand and Baljinder Singh were sentenced to undergo RI for four months each under Section 323 IPC (wrongly mentioned in the order of sentence passed by the trial Court as Section 300 IPC). All the substantive sentences were ordered to run concurrently. Out of the fine, if realised, 50% of the same was ordered to be paid to the injured equally.

Aggrieved of their conviction and sentences, the petitioners, along with Pirthi Chand and Subhash Chand @ Bansa, filed an appeal. The lower appellate Court accepted the said appeal, qua Pirthi Chand and Subhash Chand @ Bansa accused and acquitted them of charges against them. Consequently, the present petitioners were also acquitted under Section 148 IPC as well as in respect of the common object as envisaged by Section 149 IPC. Instead, Raj Kumar @ Raju was sentenced under Section 325 IPC to undergo RI for two years and to pay a fine of Rs.600/-, in default thereof, to undergo further RI for three months. He was also sentenced to undergo RI for four months under Section 323 IPC. Similarly, Pawan Kumar petitioner was sentenced to undergo RI for two years and to pay a fine of Rs.600/- under Section 325/- IPC, in default thereof, to undergo further RI for three months, whereas Baljinder Singh sentenced under Sections 325/34 IPC to undergo RI for 1½ years and to pay a fine of Rs.400/-, in default

thereof, further RI for two months. Baljinder Singh petitioner was sentenced to undergo RI for two years and to pay a fine of Rs.600/- under Section 325 IPC, in default thereof to undergo further RI for three months, whereas Pawan Kumar sentenced under Sections 325/34 IPC to undergo RI for 1½ years and to pay a fine of Rs.400/-, in default thereof to undergo further RI for two months. Pawan Kumar and Baljinder Singh were sentenced to undergo RI for four months each under Section 323 IPC. All these sentences were ordered to run concurrently. It was further ordered that out of the fine to be so realised from the convicts, 50% be given to the injured.

The prosecution had examined all the four injured, namely, Niranjan Singh PW1, Gurnaib Singh PW3, Ajaib Singh PW4 and Surinder Singh PW6 in support of the ocular account. All of them stood the test of cross-examination. The defence had not been able to bring on record any material from which it could be established that the accused had been falsely implicated. Therefore, their plea that they had been falsely implicated cannot be accepted. The testimony of DW1 Dial Singh that no such occurrence, as alleged by the prosecution, had taken place, is neither here nor there. He did not state that he was present at the place of the occurrence at the time of the incident. His plea was that no one reported the matter to him whereas, if any incident had taken place in the village, it ought to be within his knowledge but no such information was received by him. As such no case is made out for any interference in the conviction of the petitioners.

The occurrence in question had taken place more than 18 years back. As per the prosecution, there was no enmity between the parties. The occurrence developed all of a sudden when one of the accused allowed his buffaloes to stray in the fields of Norata Ram and Niranjan Singh. None of the accused was shown to be armed with any lethal weapon as according to prosecution, all of them, except Kesar Ram were carrying *lathies.* Said Kesar Ram, according to the prosecution was empty handed. The petitioners stand convicted , at the most, for the offence under Section 325 IPC, which is punishable with maximum imprisonment for seven years. The trial Court had extended the benefit of probation to one of the accused, namely, Subhash Chand @ Bansa though it was on the ground that he was about 17 years of age at the time of framing of the charge. None of the petitioners is shown to be a previous convict. Under these circumstances, ends of justice would be amply met by releasing the petitioners on probation, instead of maintaining their sentences of imprisonment and fine. Simultaneously, the Court can require the petitioners to pay adequate amount as compensation to the injured person.

Resultantly, the revision filed on behalf of the present petitioners is partly accepted by maintaining their conviction but setting aside their sentences of imprisonment and, instead requiring them to furnish bonds in the sum of Rs.20,000/- each with one surety of the like amount to the satisfaction of the Additional Chief Judicial Magistrate, Mohali, undertaking to maintain peace and to be of good behaviour for a

period of two years and to receive sentence as and when called upon to do so. The petitioners shall also deposit an amount of Rs.20,000/- each with the said Court within three months from the preparation of certified copy of the order and on their doing so, the said amount be paid to the four injured as compensation in equal shares. The Court has been informed that Niranjan Singh injured has since died. In that situation, the amount be paid to his two sons, namely Kuldeep Singh and Surinder Singh. The fine already imposed upon the petitioners by the Courts below, if paid, be also treated as compensation. Accordingly, the same be adjusted towards the aforementioned amount of Rs.20,000/- to be paid by way of compensation by each of the petitioners. In the event of the petitioners failing to furnish the bonds and depositing the compensation amount, their revision shall be deemed to have been dismissed and they be required to serve the sentences of imprisonment as imposed by the lower appellate Court.

There is no merit in the revision filed by Ajaib Singh and others. Accordingly, the same is dismissed.

(T.P.S. MANN)
JUDGE

January 18, 2010
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